

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 317 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KANTILAL VASHRAM

Appearance:

MR ST MEHTA, APP for Petitioner
MR VH DESAI for Respondent No. 1
Respondent No. 2 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 15/02/2000

ORAL JUDGEMENT

1. Present two respondents along with other accused
were tried by learned Judicial Magistrate, First Class,
Keshod, for the offences punishable under Section 7 read
with Section 16 of the Prevention of Food Adulteration

Act, 1954. Mr. J.B. Rajapara, Food Inspector, Junagadh, visited one Bhavana Provision Store, on 5th September, 1983, and obtained chilly powder by way of purchasing. According to the prosecution case, at that time, accused No. 4 Kantilal Vashram was present. In their presence, due procedure for purchasing the sample of the chilly powder was performed, panchas were called, due panchnama was prepared. Three samples were prepared and a sample was sent to the Food and Drugs Laboratory, Baroda for analysis. Thereafter, a report from the Food & Drugs Laboratory, Baroda was received and accordingly the sample which was purchased and obtained from Bhavana Provision Store, Keshod, was not conforming with the standards laid down by the Prevention of Food Adulteration Act and, therefore, sanction to initiate prosecution was obtained from the Assistant Director, Food & Drugs Administration, Junagadh Circle and complaint was filed against accused No.1 M/s Bhavana Provision Stones, accused No.2 Jayantilal Ambhavi, accused No.3 Raghav Narsi, accused No.4 Kantilal Vashram, accused No.5 Rambhaben Jetha and accused No.6 Chudasma Kishore Ramji. It is the case of the prosecution that accused Nos. 2, 3, 4 and 5 are the partners of accused No.1 firm while accused No.6 is the manufacturer of chilly powder and accordingly accused Nos. 2 to 5 have purchased chilly powder from accused No.6.

2. After framing of the charge, learned JMFC, Keshod tried the accused for the above said offences and after recording the evidence and hearing the parties, came to the conclusion that the prosecution could not prove that accused Nos. 2, 3 and 5 had any connection with accused No.1 or learned Magistrate came to the conclusion that it was not also proved by the prosecution that the said chilly powder was purchased by the accused No.1 to 5 from accused No.6 and, therefore, learned Magistrate acquitted accused Nos. 2, 3, 5 and 6 from the charges levelled against them while learned Magistrate came to the conclusion that on facts it was proved by the prosecution beyond reasonable doubt that the said chilly powder was purchased by the complainant from accused No.4, who was present at the shop at the relevant time. It was also proved that the said chilly powder was not in conformity with the standards laid down by the Prevention of Food Adulteration Act and, therefore, the learned Magistrate, Keshod was pleased to convict the accused No.1 Bhavana Provision Store and accused No.4. Kantilal Vashram for the charges punishable under Section 16 of the Prevention of Food Adulteration and accused No.4 was sentenced to one year rigorous imprisonment and was fined to the tune of Rs.2,000 and in default three months rigorous

imprisonment.

3. Being aggrieved and dissatisfied with the order passed by the learned JMFC, Keshod, accused No.1 M/s Bhavana Provision Stores and accused No.4 Kantilal Vashram filed the Criminal Appeal No.48 of 1987 before the Sessions Judge at Junagadh, which was heard by the learned Addl. Sessions Judge, Junagadh, who came to the conclusion that the complainant Mr.Rajpara was not authorised to institute the complaint in question while the complaint was not filed by authorised person i.e. the Assistant Director, Food & Drugs Control Administration, Junagadh Circle, the prosecution was bad in law. He formed opinion from the decision of the Apex Court in the matter of A.K. ROY vs. STATE OF PUNJAB, reported in AIR 1986 SC 2160. Learned Addl. Sessions Judge also came to the conclusion that the sanction recorded by an Assistant Director was an omnibus consent without applying the mind properly and, therefore, also the prosecution was bad in law. Learned Addl. Sessions Judge vide his judgment dated 11.2.1991 set aside the conviction of original accused Nos. 1 and 4 and acquitted them on the charges for which they were tried and convicted.

4. Against the decision of the learned Addl. Sessions Judge, Junagadh, this Appeal is filed by the State against the order of acquittal of present respondents i.e. original accused Nos. 1 to 6 in Criminal Case No. 91 of 1984.

5. Learned APP Mr. S.T.Mehta has taken this court through the records and evidence of each of the witnesses. Learned APP Mr. Mehta urged that the conclusion arrived at by the learned Additional Sessions Judge, Junagadh in Criminal Appeal No. 48 of 1997 is erroneous on two grounds, mainly, according to Mr. Mehta, the conviction was reversed and those grounds are (1) the complainant had no authority and (2) the sanction accorded was not according to law. Mr. Mehta urged that learned Addl. Sessions Judge has erroneously applied the ratio laid down in A.K. Roy vs. State of Punjab (supra) in the present case. He further relied on the decision of the Supreme Court in the matter of FOOD INSPECTOR, HEALTH DEPARTMENT, CHANDIGARH vs. KRISHNA DHABA, reported in 1994 Cri.L.J. 624, in which after relying the above decision of the Supreme Court in the matter of A.K. Roy vs. State of Punjab, the Supreme Court observed that in a given case the Chief Medical Officer was authorised by the Government to institute and give consent, in turn, the Chief Medical Officer gave consent

to the prosecution and also give consent to the Food Inspectors to launch prosecution. The Supreme Court held that this does not amount to delegation of powers and the quashing of complaints filed by the Food Inspectors on the ground of want of authority was quite improper.

6. Learned APP Mr. Mehta has also urged that the learned Addl. Sessions Judge was erred in holding that the sanctioning authority did not apply its mind. From the evidence of the complainant, according to Mr. Mehta, it is clear that all the material was placed before the sanctioning authority and after going through those materials, sanction was accorded. Learned APP Mr. Mehta has sought support from the decision of the Hon'ble Supreme Court in the matter of SOM NATH vs. UNION OF INDIA, reported in AIR 1971 SC 1910.

7. On the part of respondent, none is present. Learned Advocate Mr. V.H. Desai, who appears for respondent No.1, is not present while notice has been served on respondent No.2 and he is also not present. However, learned APP Mr. Mehta has assisted this court to go through the record of the case very carefully and this court has examined the material on record carefully.

8. So far as the facts of the prosecution case is concerned i.e. for obtaining sample for the public analysts and sealing and labelling them in the presence of panchas, etc. is concerned, the prosecution has proved its case beyond doubt. Prosecution was able to prove on facts that from the shop of accused No.1 Bhavna Provision Store the sample of chilly powder was obtained from accused No.4 Kantilal Vashram by the complainant on 5th September, 1983 and the same was sent to the Food and Drugs Analysis Laboratory at Baroda and report was received from the Laboratory. It was mentioned in the report that the sample obtained from accused No.4 was not conforming with the standards laid down under the Prevention of Food Adulteration Act and was found adulterated. Learned trial judge negatived the arguments on law points on behalf of accused No.4 that the Complainant had no authority to file complaint while learned Addl. Sessions Judge upheld that in view of the decision of the Supreme Court in the matter of A.K. Roy vs. State of Punjab (supra) the Food Inspector was not authorised to file a complaint and, therefore, the prosecution was bad and that the sanction accorded by the sanctioning authority was not according to law.

9. The arguments advanced by Mr. Mehta regarding the delegation of powers to initiate prosecution is

concerned, the same is required to be accepted. The learned Addl. Sessions Judge erred in holding that the present Food Inspector had no authority as per Section 20(1) of the Prevention of Food Adulteration Act to initiate prosecution. Learned Addl. Sessions Judge could not properly discern the ratio laid down by the Supreme Court in the matter of A.K. Roy vs. State of Punjab (supra). In the above said decision, the Supreme Court held that either the Central Government or the State Government or a person authorised in this behalf by general or special order by the Central Government or the State Government, may authorise any person to initiate the prosecution. Section 20(1) of the Prevention of Food Adulteration Act, which reads as under :

20 (1) No prosecution for an offence under this Act, not being an offence under Sec. 14 or Sec. 14-A shall be instituted except by or with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order, by the Central Government or the State government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in Sec. 12 if he or it produces in a Court a copy of the report of the public analyst along with the complaint.

Now in para-11 of A.K. Roy vs. State of Punjab (supra), the Supreme Court observed as under :

"The first part of S.20(1) of the Act lays down the manner of launching prosecutions for an offence under the Act, not being an offence under S.14 or S.14A. The second part provides for delegation of powers by the Central Government or the State Government. It enables that prosecutions for an offence under the Act can also be instituted with the written consent of the Central Government or the State Government or by a person authorised in that behalf, by a general or special order issued by the Central Government or the State Government. The use of the words in this behalf in S.20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose to authorise a designated person to institute such prosecutions on their behalf. The

terms of S.20(1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and record his reasons for the launching of such prosecution in the public interest."

That was again confirmed by the Supreme Court in the matter of FOOD INSPECTOR, HEALTH DEPARTMENT, CHANDIGARH vs. M/S KRISHNA DHABA, reported in Cri.L.J. 1994 624, wherein after relying the ratio in A.K. Roy (supra), the Supreme Court observed that when Chief Medical Officer was authroised to institute and give consent and when Chief Medical Officer consents the prosecution and launching of the same by Food Inspector, the quashing of the complaint on that ground was not proper because it cannot be said to be without authority. Therefore, learned Addl. Sessions Judge clearly erred in coming to a conclusion that the Assistant Director was authorised to initiate proceedings and he in turn sub-delegated his authority to the Food Inspector to initiate the prosecution and, therefore, there was breach of section 20(1) of the Prevention of Food Adulteration Act.

9. Now, so far as sanction to prosecute is concerned, the same is given by one Mr.M.S.M. Kadara, In-charge or Acting Assistant Director, Food and Drugs Control Administration, Junagadh Circle. Vide Notification dated 10th May, 1982, the State Government appointed authorities including the Assistant Director, Food & Drugs Control Administration, Junagadh Circle to initiate prosecution under the provisions of the Prevention of Food Adulteration Act. While perusing Exh. 41, it is clear that consenting authority Mr. M.S.M. Kadara has designated himself as In-charge or as Acting Assistant Director, Food and Drugs Control Administration, Junagadh Circle. Now, in this background of facts, the question of law emerges for the determination that whether a sanction to prosecute is accorded by an authority, who is acting or in-charge, would be really a sanction, as envisaged by Section 20(1) of the Prevention of Food Adulteration Act. This Court in the matter of STATE OF GUJARAT vs. DHIRAJLAL AMRATLAL KANSARA, reported in 1975 (16) GLR 982 reiterated that the statutory duty must be performed by a duly designated officer of a certain rank, person temporarily performing the duties of that rank cannot be placed at par with the persons designated statutorily. In this particular case, the complaint was required to be filed by the Chief Officer under the Gujarat Municipalities Act and the

complaint was filed by person temporarily holding the charge of Chief Officer and in those circumstances, this court held that In-charge Chief Officer cannot himself sanction or file the complaint. Therefore, according to the above said Notification dated 10th May, 1982, only the Assistant Director, Food & Drugs Control Administration, Junagadh Circle was authorised by the State Government to initiate and consent the prosecutions in the local area in the District of Junagadh and Amreli, under Section 20(1) of the Prevention of Food Adulteration Act. Section - 19 of the General Clauses Act has been applied by this court in State of Gujarat v. Dhirajlal Amratlal (supra), this will not include an In-charge or Acting Director. Any authority accords sanction to initiate proceedings, must be a person appointed by the competent authority to that particular rank or designation. Prosecution in this case has failed to prove that Mr. Kadara was appointed by the competent authority as Assistant Director, Food and Drugs Control Administration, Junagadh Circle, instead, by Exh.41 it is clearly laid down that he was merely an In-charge or an Acting Assistant Director, Food and Drugs Control Administration, Junagadh Circle. This is clear breach of Sec. 20(1) of the Prevention of Food Adulteration Act. Therefore, this is a case where no sanction to prosecute has been accorded in accordance with Section 20(1) of the the Prevention of Food Adulteration Act and, therefore, the prosecution against all the accused including the present respondents is bad in law.

11. This Appeal is decided on this important question of law, I do not consider it necessary to go to each details of the matter, but it is made clear that the acquittal of the present respondents is maintained for the reasons mentioned above in this judgment and not for the reasons recorded by the learned Addl. Sessions Judge.

12. In this view of the matter, this Appeal is dismissed. Bail bonds executed by the respondents stand cancelled.

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